

## **EXHIBIT 3**



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To Whom It May Concern:

I have been involved in the fresh produce industry since 1983. The following is a list of employment positions I have had and the responsibilities for each: I was employed at Roger Harloff Farms from 1983-1987, Pacific Tomato Growers from 1988 - 1991. I was employed by Del Monte Fresh Produce, NA. from 1991 through 2001. During my tenure with Del Monte, it purchased the San Miguel packaging facility located in Atlanta, Georgia. At the time of purchase, I was the general manager for its Georgia farming operations located in McRae, Georgia. To my understanding, during the time San Miguel operated its packaging facility in Atlanta, it procured product from a number of growers. I am familiar with the fresh produce packaging industry in the Southeast United States. During the last twenty years, the supplying of "greens" fresh produce has changed significantly. The concept of fresh greens contained in a self-contained package, washed and ready for cooking has become the standard. In preparation of making a report, I have reviewed the Grower-Shipper Agreement dated September 12, 2014; the production schedules prepared by San Miguel; and a spreadsheet indicating orders, deliveries of produce by Herndon Farms and San Miguel.

From my experience, the concept of shipping raw greens from California to Georgia for packing or processing is not a reasonable business decision. Greens are by their nature a perishable commodity which need to be processed as quickly as possible. Trucking the produce across the country normally adds three days to processing. As a result, the produce quality is compromised even though iced and cooled during shipment. Further the margins that can be earned on greens are relatively limited. The cost of shipping raw product across the country for processing is not cost effective. To ship raw greens across the country the icing of product adds a great deal of weight to the trucking. A more reasonable solution would have been to package and ship any required goods directly from California.

In reviewing the Grower-Shipper Agreement, there is no requirement to share losses. Typically, these agreements would specify how losses would be allocated if the grower was unable to provide the product. As noted in the agreement, grower-shipper agreements are not considered partnerships as the grower has no control over pricing by the shipper. Normally production schedules would be furnished by the farmer, and the obligation would be that if the farmer produced the product, the Shipper would be obligated to buy the product. Conversely, if the farmer failed to produce due to an issue within its control the farmer would be responsible for covering the shortage. In the materials I reviewed, it does not appear the production schedules are consistent with the quantity actually shipped to or packed at Robo.



Since it is generally understood in the industry that Georgia has a nine-month growing season Sept 15<sup>th</sup> through June 15<sup>th</sup> it is not feasible for a Georgia operation to supply product during the summer months. Greens will not grow in Georgia during the summer months due to the heat. Typically, in the industry, greens are procured from growers located in the northern states such as Ohio and Michigan for the summer months. The cost of shipping from these states is noticeably cheaper than procuring greens from California for both shipping costs as well as quicker deliveries.

In the produce industry generally, if there is a dispute as to weights or quality, notice must be given within 48 hours. If a dispute is not resolved, it is incumbent upon the purchaser to request a USDA inspection to verify the complaint. As I understand the facts, San Miguel is contesting the weight of product shipped by Herndon Farms. Unless the product is iced prior to delivery, I would be of the opinion that a RPC would not contain 10 pounds of water weight. In any event once a bill of lading is signed by the receiver and no dispute is raised immediately the product is deemed accepted under the terms of the bill of lading.

Best regards,

A handwritten signature in black ink, appearing to read "Michael Hively".

Michael Hively  
Red Sky Ag LLC